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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/643,052

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EXAMINER

BECKER, DREW E

ART UNIT

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1794

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11/29/2007

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/643,052	Applicant(s) LEE ET AL.	
	Examiner Drew E. Becker	Art Unit 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*; 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 18-34 and 47-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-34 and 47-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

1. The first sentence of the specification should reference the parent application, its relationship to the present application, its filing date, and the current status of the parent.

### ***Claim Rejections - 35 USC § 112***

2. Claims 18-34 and 47-51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant has not pointed out where the new claim limitations are disclosed within the specification. In particular, the application does not appear to provide support for "removable and enclosable food product compartments". It is noted that compartments are taught (#50), but that they are not disclosed as being "removable and enclosable". This terminology appears to be describing the movable drawers (#52), which are already found in claims 27 and 47.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 18-34 and 47-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claims 18 and 47 recite "removable compartments". It is not clear how the compartment can be removable since compartments are normally considered to be a space within a housing rather than an actual component of the device.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 18, 21-29, and 47-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohata [Pat. No. 4,426,923] in view of Smith et al [Pat. No. 4,835,351], Arnold et al [Pat. No. 6,011,243], and Su [Pat. No. 5,901,642].

Ohata teaches a method comprising the steps of heating water in a reservoir of a steamer assembly (Figure 2, #17), maintaining the water temperature and humidity levels (column 3, line 60 to column 4, line 9), heating air in a food cabinet and maintaining that temperature (Figure 2, #9; column 3, lines 47-60), placing pre-cooked food inside the cabinet (column 2, line 60), the operator inherently controlling and sequencing food removal, maintaining temperatures of 30-80°C (column 3, line 24),

maintaining a humidity of 70% (column 3, line 27), and promoting drainage (Figure 2, #8). Ohata does not recite plural compartments, sequencing the removal of food by indicating the food which is closest to its expiry time via lights, and drawers with carrier inserts. Smith et al teach a method for storing foods by placing them in separate compartments of a food cabinet (Figure 2, #12 & 14), maintaining an air temperature within the cabinet (Figure 19), and maintaining a water temperature within a steamer assembly (Figure 19). It would have been obvious to one of ordinary skill in the art to incorporate the plural compartments of Smith et al into the invention of Ohata since both are directed to methods of storing foods, since Ohata already taught different types of foods (column 2, line 61) which required different holding conditions, and since the plural compartments of Smith et al provided a means for holding different foods at different hold conditions. Arnold et al teach a method for staging food in a holding cabinet by indicating the food which is closest to its expiry time via lights (abstract; column 13, lines 10-30). It would have been obvious to one of ordinary skill in the art to incorporate the expiry lights of Arnold et al into the invention of Ohata, in view of Smith, since all are directed to methods of storing food, since Ohata stored foods of different types (column 2, line 61), since each food possessed a different storage life, and since the indicator lights of Arnold et al provided a convenient means for tracking food storage times and preventing food from exceeding its hold time (column 1, line 50 to column 2, line 3). Su teaches a method of storing foods within drawers with carrier inserts (Figure 4). It would have been obvious to one of ordinary skill in the art to incorporate the drawers and carrier inserts of Su into the invention of Ohata, in view of Smith et al and

Arnold et al, since all are directed to methods of storing foods, since Ohata already included plural ventilated supports (Figure 2, #8 & 13), and since the drawers and carrier inserts of Su eliminated the need to reach inside the cabinet for the food.

8. Claims 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohata, in view of Smith et al, Su, and Arnold et al, as applied above, and further in view of Baker et al [Pat. No. 4,189,631].

Ohata, Arnold et al, Su, and Smith et al teach the above mentioned concepts. Ohata, Arnold et al, Su, and Smith et al do not recite toasted hamburger buns. Baker et al teach a method for storing toasted hamburger buns in a warm environment (column 1, lines 5-26). It would have been obvious to one of ordinary skill in the art to incorporate the toasted hamburger buns of Baker et al into the invention of Ohata, in view of Smith et al, Su, and Arnold et al, since all are directed to methods of storing foods, since Ohata already included cooked foods (column 2, line 61), and since toasted hamburger buns were commonly stored in warm environments as shown by Baker et al.

9. Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohata, in view of Smith et al, Arnold et al, and Su, as applied above, and further in view of Hiller et al [Pat. No. 4,436,082].

Ohata, Su, Arnold et al, and Smith et al teach the above mentioned concepts. Su also teaches offset rows of openings (Figure 4). Ohata, Su, Arnold et al, and Smith et al do not recite openings in the form of slits. Hiller et al teach a method of storing food by placing the food on carriers with open slits (Figure 3, #54). It would have been obvious to one of ordinary skill in the art to incorporate the slits of Hiller et al into the invention of

Ohata, in view of Smith et al, Arnold et al, and Su, since all are directed to methods of storing food, since Su already included carrier inserts with openings (Figure 4), and since slit-shaped openings were commonly used in food storage devices as shown by Hiller et al.

10. Claims 32 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ohata, in view of Smith et al, Su, and Arnold et al, as applied above, and further in view of Kuest et al [Pat. No. 4,143,592].

Ohata, Arnold et al, Su, and Smith et al teach the above mentioned concepts. Ohata, Arnold et al, and Smith et al do not recite a steam baffle plate. Kuest et al teach a method for storing food by use of a steam baffle plate (Figure 1, #5). It would have been obvious to one of ordinary skill in the art to incorporate the steam baffle plate of Kuest et al into the invention of Ohata, in view of Smith et al, Su, and Arnold et al, since all are directed to methods of storing foods, since Ohata already included a steamer assembly and food cabinet, and since steam baffle plates were commonly used to separate steamer assemblies and food cabinets as shown by Kuest et al.

11. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohata, in view of Smith et al, Arnold et al, and Su, as applied above, and further in view of Ewald et al [Pat. No. 6,607,766].

Ohata, Su, Arnold et al, and Smith et al teach the above mentioned concepts. Ohata, Su, Arnold et al, and Smith et al do not recite an angled rear surface with leaning food. Ewald et al teach a method of storing food within a tray having an angled rear wall (Figures 9-10). It would have been obvious to one of ordinary skill in the art to

incorporate the angled wall of Ewald et al into the invention of Ohata, in view of Smith et al, Arnold et al, and Su, since all directed to methods of storing food, since Su already included a drawer (Figure 4), since leaning foods on a wall would provide a greater storage density, and since the angled rear wall of Ewald et al would have provided a convenient means for supporting leaning foods.

### ***Response to Arguments***

12. Applicant's arguments filed 8/27/07 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***



13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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DREW BECKER  
PRIMARY EXAMINER  
11/28/07